IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl.Appeal No. 684 DB of 2005
Date of Decision:4th December, 2007

Devi Dayal

...Appellant

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR.JUSTICE MEHTAB S.GILL
HON'BLE MR.JUSTICE HARBANS LAL

Present: Mr. Paramjit Singh Brar, Advocate
for the appellant.

Mr.AS Jatana, Addl.Advocate General, Punjab with
Mr.DK Mittal, Deputy Advocate General, Punjab

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Harbans Lal, J.

This appeal has been directed against the judgment dated 8th August, 2005 and order of sentence dated 9th August, 2005 passed by the Court of learned Special Judge, Ferozepur whereby he convicted and sentenced the accused to undergo rigorous imprisonment for a period of 12 years and to pay a fine of Rs.1 lac or in default thereof to further undergo rigorous imprisonment for one year under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'the Act').

The facts in brief of the prosecution case are that on 17th April, 2001, ASI Rachpal Singh of CIA Staff, Ferozepur among other police officials was proceeding for patrolling by an official vehicle. On the way, ASI Bakshish Singh, Incharge CIA Staff, Ferozepur and other police

officials who were on their separate official Gypsy were also joined. When the police party was going from village Kamalgarh to village Katora and reached at a chowk in the area of village Kamalgarh, accused Devi Dyal alongwith two other persons was seen coming on a scooter from the side of village Wara Pow Wind. On catching sight of the police party, they made an attempt to beat a retreat on their scooter. ASI Bakshish Singh made them to stop their scooter. Two persons riding on the pillion alighted from the scooter and started running in different directions. One of them was the accused Devi Dyal, who was nabbed by ASI Rachpal Singh. He was carrying one Jhola (bag) which was hanging from his right shoulder. ASI Rachpal Singh told him that some substance like opium was suspected to be in the bag and it was to be searched. He was made aware of his right to be searched either in the presence of a Magistrate or a Gazetted Officer. ASI Bakshish Singh called DSP Pardeep Kumar at the spot by flashing a message through wireless. He came at the spot and introduced himself to the accused by disclosing his rank and identity. The accused opted to be searched in his (DSP Pardeep Kumar) presence. On search of the bag conducted by ASI Rachpal, opium duly wrapped in a glazed paper was recovered, out of which 20 grams was separated to serve as sample and it was converted into a parcel. The remaining, when weighed came to 4 kg. 500 grams which was also made into a parcel. Both these parcels were sealed with seals 'RS' and 'PK' and seized vide memo. On personal search of the accused, a sum of Rs.100/- was recovered which were also taken into possession vide separate memo.

The accused could not produce any licence or permit for retaining the opium. Ruqa was sent to the police station, where on its basis formal FIR under Section 18 ibid was registered against the accused. The grounds of arrest were disclosed to the accused. A rough site plan showing the place of recovery was prepared by ASI Rachpal Singh. He handed over the entire case property alongwith person of the accused to Station House Officer Palwinder Singh, who after verification of the facts, put his seal 'PS' on both the parcels. He took into possession the case property. SHO Palwinder Singh produced the same before the Illaqa Magistrate for obtaining the order with regard to the retention of the case property. After completion of investigation, the charge-sheet was laid in the Court for trial of the accused under Section 18 ibid.

The accused was charged under Section 18 ibid, to which he did not plead guilty and claimed trial.

In order to substantiate its allegations, the prosecution has examined ASI Rachpal Singh PW1, DSP Pardeep Kumar PW2, SI Palwinder Singh PW3, HC Arpinder Singh PW4, HC Pal Singh PW5, and closed its evidence by giving up SI Surinder Mohan as well as SI Manjit Singh being unnecessary. On close of the prosecution evidence, when examined under Section 313 Cr.P.C., the accused has come up with a plea that " I am working as puncture repair mechanic at Zira. About 4½ years ago, the police of Police Station Zira came to my shop and requested for repair of the government jeep, but I made request that firstly I will do my work in hand, then I shall repair their jeep. On my refusal, the police party

abused me and threw me in their jeep and took me in CIA Staff, Ferozepur where I was kept in illegal confinement and later on, falsely implicated in this case."

After hearing the learned Additional Public Prosecutor for the State as well as the learned defence counsel and examining the evidence on record, the learned trial Court convicted and sentenced the accused as noticed at the outset. Feeling aggrieved with the judgment dated 8th August, 2005 as well as the order of sentence dated 9th August, 2005, the accused preferred this appeal.

We have heard Mr.Paramjit Singh, Advocate for the appellant as well as Mr. AS Jatana, Additional Advocate General, Punjab with Mr. DK Mittal, Deputy Advocate General, Punjab and have gone through the record with due care and circumspection.

On merits, the conviction has not been assailed by Mr. Brar. Even otherwise on perusing the entire evidence on record with due care and caution, it is found that the conviction does not suffer from any infirmity or illegality. Consequently, the same is maintained.

Mr. Brar, posing a challenge to the quantum of sentence has submitted that the learned trial Court has awarded the sentence of 12 years to the appellant, which is on the higher side. The same may be reduced from 12 years to 10 years. This prayer has not been seriously opposed by the learned State counsel. As per the prosecution evidence, the opium weighing 4 kgs. 520 grams was recovered from the unauthorised possession of the appellant. The doctrine of proportionality contemplates that the sentence

must commensurate with the gravity of offence. Keeping in view the facts and circumstances of the case, the substantive sentence awarded by the learned trial Court is reduced to 10 years rigorous imprisonment while maintaining the fine imposed by the learned trial Court as well as its default clause. With this modification in the order of sentence, the instant appeal is disposed off.

(Harbans Lal)
Judge

4th December, 2007 **(Mehtab S.Gill)**
gsv **Judge**